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State of California

APR 25 2013

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AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
CRUNCHYROLL, INC.

Kun Gao and Sangha Han certify that:

1. They are the President and Secretary, respectively, of Crunchyroll, Inc., a California corporation.

2. The Articles of Incorporation of the corporation, as amended to the date of the filing of this certificate, including amendments set forth herein but not separately filed (and with the omissions required by Section 910 of the California Corporations Code) are restated in their entirety as set forth in Exhibit "1" attached hereto and made a part hereof by this reference.

3. The Amended and Restated Articles of Incorporation set forth herein have been duly approved by the Board of Directors of the corporation.

4. The amendments to the Articles of Incorporation included in the Amended and Restated Articles of Incorporation set forth herein (other than omissions required by Section 910 of the Corporations Code) have been duly approved by the required vote of the shareholders of the corporation in accordance with Sections 902 and 903 of the California Corporations Code. The corporation has two classes of stock, and the number of outstanding shares is 10,331,476 shares of Common Stock and 5,793,830 shares of Preferred Stock, consisting of 5,793,830 shares of Series A Preferred Stock. The number of shares voting in favor of the Amended and Restated Articles of Incorporation set forth herein equaled or exceeded the vote required. The percentage vote required was more than 50% of the outstanding shares of Common Stock and 50% of the outstanding shares of the Series A Preferred Stock.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: April 25, 2013


Kun Gao, President
Sangha Han, Secretary

EXHIBIT "1"
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
CRUNCHYROLL, INC.

ARTICLE I

The name of the corporation is Crunchyroll, Inc.

ARTICLE II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. Unless applicable law otherwise provides, any amendment, repeal or modification of this Article III shall not adversely affect any right or protection of a director under this Article III that existed at or prior to the time of such amendment, repeal or modification.

ARTICLE IV

The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, by agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the applicable limits on such excess indemnification set forth in Section 204 of the California Corporations Code. Unless applicable law otherwise requires, any amendment, repeal or modification of any provision of this Article IV shall not adversely affect any contract or other right to indemnification of any agent of the corporation that existed at or prior to the time of such amendment, repeal or modification.

ARTICLE V

1. **Authorized Shares.** This corporation is authorized to issue two (2) classes of shares, designated "Common Stock" and "Preferred Stock," respectively, both of which shall have no par value. The total number of shares of Common Stock authorized to be issued is

nineteen million ninety thousand six hundred eighty nine (19,090,689) shares. The total number of shares of Preferred Stock authorized to be issued is six million four hundred forty nine thousand five hundred sixty nine (6,449,569) shares, all of which are designated as "Series A Preferred Stock."

ARTICLE VI

The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock and the Common Stock are as hereinafter set forth in this Article VI.

1. **Definitions.** For purposes of this Article VI, the following definitions apply:

1.1 ***"Board"*** shall mean the Board of Directors of the Company.

1.2 ***"Company"*** shall mean this corporation.

1.3 ***"Common Stock"*** shall mean the Common Stock, no par value per share, of the Company.

1.4 ***"Common Stock Dividend"*** shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

1.5 ***"Preferred Dividend Rate"*** shall mean \$0.1464 per share per annum (as adjusted to the extent necessary to reflect any Preferred Stock Event (as defined below)).

1.6 ***"Filing Date"*** shall mean the date on which these Amended and Restated Articles of Incorporation are accepted for filing by the Secretary of State of the State of California.

1.7 ***"Original Issue Price"*** shall mean one dollar eighty-three cents (\$1.83) per share (as adjusted to the extent necessary to reflect any Preferred Stock Event (as defined below)).

1.8 ***"Permitted Repurchases"*** shall mean the repurchase by the Company of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Company or a subsidiary that are subject to restricted stock purchase agreements, vesting agreements, stock option exercise agreements, or similar agreements under which the Company has the option to repurchase such shares: (i) at cost, or if lower, at the then fair market value, upon the occurrence of certain events, such as the termination of employment or services; or (ii) at any price pursuant to the Company's exercise of a right of first refusal to repurchase such shares, as applicable.

1.9 ***"Series A Preferred Stock"*** shall mean the Series A Preferred Stock, no par value per share, of the Company.

1.10 “**Subsidiary**” shall mean any corporation of which at least fifty percent (50%) of the outstanding voting stock is at the time owned directly or indirectly by the Company or by one or more of such subsidiary corporations.

1.11 “**Preferred Stock Event**” shall mean any of the following events occurring after the Filing Date: (i) the issue by the Company of additional shares of Series A Preferred Stock as a dividend or other distribution on the outstanding shares of Series A Preferred Stock, (ii) a subdivision of the outstanding shares of Series A Preferred Stock into a greater number of shares of such Series A Preferred Stock, (iii) a combination of the outstanding shares of such Series A Preferred Stock into a smaller number of shares of such Series A Preferred Stock, and (iv) the conversion or change of the outstanding shares of such Series A Preferred Stock into a different number of shares of some other class or classes of stock whether by recapitalization, reclassification or otherwise, *provided, however*, that in no event shall a Preferred Stock Event be deemed to include a liquidation, dissolution or winding up of the Company provided for in Section 3, or any conversion, recapitalization, reclassification or other event for which adjustment is made under Section 5.

2. Dividend Rights.

2.1 Series A Preferred Stock Dividend Preference. In each calendar year, the holders of the then outstanding Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Company legally available therefore, noncumulative dividends at the Preferred Dividend Rate, prior and in preference to the payment of any dividend on the Common Stock in such calendar year. No dividends shall be paid, with respect to the Common Stock during any calendar year unless dividends in the total amount of the Preferred Dividend Rate shall have first been paid or declared and set apart for payment to the holders of the Series A Preferred Stock during that calendar year. Payments of any dividends to the holders of Series A Preferred Stock shall be paid on a pro rata basis according to the number of outstanding shares of Series A Preferred Stock then held by each holder thereof. Dividends on the Series A Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Series A Preferred Stock by reason of the fact that the Company shall fail to declare or pay dividends on the Series A Preferred Stock in the amount of the Preferred Dividend Rate for the Series A Preferred Stock or in any other amount in any calendar year or any fiscal year of the Company, whether or not the earnings of the Company in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part. Notwithstanding anything to the contrary herein, the provisions of Sections 2.1, 2.2 and 2.3 shall not apply to any Common Stock Dividend, any Permitted Repurchase, or any dividend for which an adjustment is made pursuant to Section 5.5.

2.2 Participation Rights. If, after dividends in the full preferential amount specified in Section 2.1 for the Series A Preferred Stock have been paid or declared and set apart in any calendar year of the Company, the Board shall declare additional dividends out of funds legally available therefore in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock and the Series A Preferred Stock according to the number of shares of Common Stock held by such holders, where each holder of shares of Series A Preferred Stock is to be treated for this purpose as holding the greatest whole number of shares of

Common Stock then issuable upon conversion of all shares of Series A Preferred Stock, at the then effective conversion rate, held by such holder pursuant to Section 5.

2.3 Non-Cash Dividends. Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

3. Liquidation Rights. In the event of any Sale of the Company (as defined below), the proceeds, funds and assets that may be legally distributed to the Company's shareholders (the "**Available Funds and Assets**") shall be distributed to shareholders in the following manner:

3.1 Series A Preferred Stock Liquidation Preference. The holder of each share of Series A Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any share of Common Stock, an amount per share equal to the Original Issue Price plus all declared and unpaid dividends on the Series A Preferred Stock. If upon any Sale of the Company, the Available Funds and Assets to be distributed to the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of their full preferential amount described in this Section 3.1, then all of the Available Funds and Assets shall be distributed among the holders of the then outstanding Series A Preferred Stock pro rata according to the number of outstanding shares of Series A Preferred Stock held by each holder thereof.

3.2 No Participation Rights. If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Series A Preferred Stock of their full preferential amounts described above in Section 3.1, then all such remaining Available Funds and Assets shall be distributed on a pro rata basis among the holders of the then outstanding Common Stock according to the number of shares of Common Stock held by such holders.

3.3 Merger or Sale of Assets; Liquidation. The (i) reorganization, consolidation or merger of the Company with or into any other entity or entities in which the holders of the Company's outstanding shares immediately before such reorganization, consolidation or merger do not, immediately after such reorganization, consolidation or merger retain stock (or other ownership interests) representing a majority of the voting power of the surviving entity or entities of such reorganization, consolidation or merger in substantially the same proportion as their ownership immediately prior to the reorganization, consolidation or merger as a result of their shareholdings in the Company immediately prior to the reorganization, consolidation or merger; (ii) sale, transfer or other disposition of all or substantially all of the assets of the Company; (iii) sale by shareholders of a majority of the then outstanding shares of capital stock of the Company to a person or persons who are not then shareholders of the Company or affiliates of shareholders, or (iv) liquidation, dissolution or winding up of the Company (whether voluntary or involuntary), shall each be deemed to be a "**Sale of the Company**". The treatment of any particular transaction or series of related transactions as a Sale of the Company may be waived by the vote or written consent of the holders of a majority of the outstanding Series A Preferred Stock.

3.4 Non-Cash Consideration. If any assets of the Company distributed to shareholders in connection with any Sale of the Company are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board, except that any securities to be distributed to shareholders in a Sale of the Company shall be valued as follows:

(a) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

(i) if the securities are then traded on a national securities exchange or the Nasdaq Global Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) days prior to the distribution; and

(ii) if actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30-day period ending three (3) days prior to the distribution; and

(iii) if there is no active public market, then the value shall be the fair market value thereof, as determined in good faith by the Board.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subparagraphs (a)(i),(ii) or (iii) of this Section 3.4 to reflect the approximate fair market value thereof, as determined in good faith by the Board.

3.5 Alternative Liquidation Rights. Notwithstanding the foregoing provisions, if in the event of a Sale of the Company, a holder of shares of Series A Preferred Stock would be entitled to receive, pursuant to Section 3.1, an amount that is less than the amount that such holder would receive in such Sale of the Company if such shares of Series A Preferred Stock were converted into Common Stock pursuant to Section 5 as of immediately prior to such Sale of the Company (the "*Alternative Amount*"), then in lieu of receiving any amounts under Section 3.1 on account of such shares, such holder shall instead receive the Alternative Amount on account of such shares.

4. Voting Rights.

4.1 Common Stock. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

4.2 Series A Preferred Stock. Each holder of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Series A Preferred Stock could be converted pursuant to the provisions of Section 5 below at the record date for the determination of the shareholders entitled

to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of shareholders is solicited.

4.3 General. Subject to the foregoing provisions of this Section 4, each holder of Series A Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Company (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided herein or by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Series A Preferred Stock and the holders of Common Stock shall vote together and not as separate classes at any annual or special meeting of the shareholders, and the holders of Series A Preferred Stock may act by written consent in the same manner as the holders of Common Stock.

4.4 Board of Directors Election and Removal.

(a) Election.

(i) For so long as at least 1,000,000 shares of Series A Preferred Stock are outstanding, the holders of the Series A Preferred Stock, voting as a separate series shall be entitled to elect one (1) director of the Company (such minimum share number to be adjusted to the extent necessary to reflect any Preferred Stock Event) at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill a vacancy caused by the resignation, death or removal of such directors.

(ii) So long as the holders of Series A Preferred Stock, voting as a separate series, have the right to elect a director, then the holders of the Common Stock, voting as a separate class shall be entitled to elect three (3) directors of the Company at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill a vacancy caused by the resignation, death or removal of such directors.

(iii) Any other directors of the Company shall be elected by the holders of the Common Stock and the holders of the Series A Preferred Stock, voting together as a single class (on an as converted to Common Stock basis) at each meeting or pursuant to each consent of the Company's shareholders for the election of directors, and to remove from office such directors and to fill a vacancy caused by the resignation, death or removal of such directors.

(b) Quorum; Required Vote.

(i) Quorum. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of the (x)

Series A Preferred Stock, or (y) Common Stock, or (z) the Common Stock and Series A Preferred Stock (voting together as a single class and on an as converted to Common Stock basis), respectively, shall constitute a quorum of the Series A Preferred Stock, or Common Stock, or the Common Stock and Series A Preferred Stock, voting together, as the case may be, for the election of directors to be elected solely by the holders of the Series A Preferred Stock, or Common Stock, or Common Stock and Series A Preferred Stock, voting together as a single class and on an as-converted basis, respectively.

(ii) Required Vote. With respect to the election of any director or directors by the holders of the outstanding shares of the specified series, class or classes of stock given the right to elect such director or directors pursuant to Section 4.4(a) above (the "***Specified Stock***"), that candidate or those candidates (as applicable) shall be elected who either: (x) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (y) in the case of any such vote taken by written consent without a meeting, are elected by the unanimous written consent of the holders of shares of such Specified Stock, except that, if such vote is to fill a vacancy on the Board other than a vacancy created by removal of a director, such vacancy may be filled by election by the written consent of the holders of a majority (on an as-converted basis) of the outstanding shares of such Specified Stock entitled to vote pursuant to Section 305(b) of the California Corporations Code.

(c) Vacancy. If there shall be any vacancy in the office of a director elected by the holders of any Specified Stock pursuant to Section 4.4(a), then a successor to hold office for the unexpired term of such director may be elected by the required vote of holders of the shares of such Specified Stock specified in Section 4.4(b)(ii) above that are entitled to elect such director under Section 4.4(a), by approval of the Board, or as otherwise permitted by applicable law.

(d) Removal. Subject to Section 303 of the California Corporate Code, any director who shall have been elected to the Board by the holders of any Specified Stock or whose Board position may be filled by holders of such Specified Stock, voting separately, or by any director or directors elected by holders of any Specified Stock as provided in subsection 4.4(c), may be removed during his or her term of office, without cause, by the affirmative vote of shares representing a majority of the voting power of all the outstanding shares of such capital stock entitled to vote to elect such director under Section 4.4(a), given either at a meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders without a meeting, and any vacancy created by such removal may be filled only in the manner provided in subsection 4.4(c).

(e) Procedures. Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting, in order to elect or remove a director under this Section 4.4, shall be held in accordance with the procedures and provisions of the Company's Bylaws, the California Corporations Code and applicable law regarding shareholder meetings and shareholder actions by written consent, as

such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

5. **Conversion Rights.** The outstanding shares of Series A Preferred Stock shall be convertible into Common Stock as follows:

5.1 **Optional Conversion.**

(a) At the option of the holder thereof, each share of Series A Preferred Stock shall be convertible, at any time, into fully paid and nonassessable shares of Common Stock as provided herein.

(b) Each holder of Series A Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series A Preferred Stock or Common Stock, and shall give written notice to the Company at such office that such holder elects to convert the same and shall state therein the number of shares of Series A Preferred Stock being converted. Thereupon the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Series A Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(c) If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion is in connection with automatic conversion provisions of Section 5.2(ii) below, such conversion shall be deemed to have been made on the conversion date described in the shareholder consent approving such conversion, and the persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date.

5.2 **Automatic Conversion.** Each share of Series A Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein, on the earlier to occur of (i) immediately prior to the closing of an underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the aggregate public offering price (before deduction of underwriters' discounts and commissions) equals or exceeds twenty million dollars (\$20,000,000) (a "***Qualified IPO***") or (ii)

the Company's receipt of the written consent of the holders of at least a majority of the voting power of the then outstanding shares of Series A Preferred Stock.

5.3 Conversion Price. Each share of Series A Preferred Stock shall be convertible in accordance with Section 5.1 or Section 5.2 above into the number of shares of Common Stock which results from dividing the Original Issue Price by the Conversion Price (as defined below) for the Series A Preferred Stock that is in effect at the time of conversion. The initial Conversion Price per share for the Series A Preferred Stock shall be equal to the Original Issue Price; provided, however that such Conversion Price shall be subject to adjustment from time to time as provided below and to the extent necessary to reflect any Preferred Stock Event (such price, as adjusted from time to time, the "**Conversion Price**").

5.4 Adjustment Upon Common Stock Event. Upon the happening of any Common Stock Event (as defined below) after the Filing Date, the Conversion Price shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Conversion Price. The Conversion Price shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used herein, the term "**Common Stock Event**" shall mean (i) the issue by the Company of additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock without a corresponding dividend or other distribution on the outstanding Preferred Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock without a corresponding dividend or other distribution on the outstanding Preferred Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock without a corresponding dividend or other distribution on the outstanding Preferred Stock.

5.5 Adjustments for Other Dividends and Distributions. If at any time or from time to time after the Filing Date the Company pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Company other than shares of Common Stock (each an "**Other Distribution Event**"), then in each such Other Distribution Event provision shall be made so that the holders of Series A Preferred Stock shall receive upon conversion to Common Stock thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Company which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such Other Distribution Event (or such record date, as applicable) and had they thereafter, during the period from the date of such Other Distribution Event (or such record date, as applicable) to and including the date of conversion from Series A Preferred Stock to Common Stock, retained such securities receivable by them as a result of such Other Distribution Event during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series A Preferred Stock or with respect to such other securities by their terms.

5.6 Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Filing Date the Common Stock issuable upon the conversion of the Series A Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, exchange or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, or consolidation provided for elsewhere in this Section 5), then in any such event each holder of Series A Preferred Stock shall have the right thereafter to convert such Series A Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, exchange or other change by holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock could have been converted immediately prior to such recapitalization, reclassification, exchange or other change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

5.7 Reorganizations, Mergers and Consolidations. If at any time or from time to time after the Filing Date there is a reorganization of the Company (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 5) or a merger or consolidation of the Company with or into another entity (except a Sale of the Company which is governed by Section 3), then, as a part of such reorganization, merger or consolidation, provision shall be made so that the holders of the Series A Preferred Stock thereafter shall be entitled to receive, upon conversion of the Series A Preferred Stock to Common Stock, the number of shares of Common Stock or other securities or property of the Company, or of such successor entity resulting from such reorganization, merger or consolidation, to which such Series A Preferred Stock holder would have been entitled to had such Series A Preferred Stock been converted to Common Stock prior to such reorganization, merger or consolidation. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Series A Preferred Stock after the reorganization, merger or consolidation to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent to the provisions hereof as may be practicable. This Section 5.7 shall similarly apply to successive reorganizations, mergers and consolidations.

5.8 Price-Based Anti-Dilution Protection for the Series A Preferred Stock.

(a) Adjustment Formula. If at any time after the date shares of Series A Preferred Stock are first sold, the Company issues or sells, or is deemed by the provisions of this Section 5.8 to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in Section 5.4, a dividend or distribution as provided in Section 5.5 or a recapitalization or other change or transaction as provided in Sections 5.6 or 5.7 for an Effective Price (as hereinafter defined) that is less than the Conversion Price in effect immediately prior to such issue or sale, then, and in each such case, the Conversion Price shall be reduced, as of the close of business on the date of such issue or sale, to the price obtained by multiplying such Conversion Price by a fraction:

(A) The numerator of which shall be the sum of (x) the number of Common Stock Equivalents Outstanding (as hereinafter defined) immediately prior to such issue or sale of Additional Shares of Common Stock plus (y) the quotient obtained by dividing the Aggregate Consideration Received (as hereinafter defined) by the Company for the total number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold) by the Conversion Price in effect immediately prior to such issue or sale; and

(B) The denominator of which shall be the sum of (x) the number of Common Stock Equivalents Outstanding immediately prior to such issue or sale plus (y) the number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold).

(b) Certain Definitions. For the purpose of making any adjustment required under this Section 5.7:

(i) ***“Additional Shares of Common Stock”*** shall mean all shares of Common Stock issued, or deemed by the provisions of this Section 5.8 to be issued, by the Company, whether or not subsequently reacquired or retired by the Company, other than:

(a) up to 853,000 shares of Common Stock issued or deemed issued after the Filing Date to employees, officers, directors, contractors, consultants or advisers to, the Company or any Subsidiary pursuant to incentive agreements, stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other incentive arrangements that are approved by the Board; provided, however, that such amount shall be increased to reflect any shares of Common Stock (i) not issued pursuant to the rights, agreements, option or warrants (***“Unexercised Options”***) described above as a result of the termination of such Unexercised Options or (ii) reacquired by the Company from employees, directors or consultants at cost (or the lesser of cost or fair market value) pursuant to agreements that permit the Company to repurchase such shares upon termination of services to the Company;

(b) shares of Common Stock issued or deemed issued (i) in connection with joint ventures, manufacturing, marketing, distribution, licensing or other commercial arrangements with the Company that are entered into primarily for other than capital raising purposes or (ii) to parties that are providing the Company with equipment leases, real property leases, loans, credit lines, or guaranties of indebtedness, in each case that are primarily for other than equity financing purposes; provided, however, that issuances or deemed issuances of shares of Common Stock described in this subsection (b) in excess of 274,176 (which number shall be increased automatically to reflect any shares of Common Stock (i) not issued pursuant to any options, warrants or rights issued in connection with the transactions described above as a result of the termination thereof, or (ii) as a result of the repurchase thereof by the Company at cost (or the lesser of cost or fair market value) shall be excluded from the definition of ***“Additional Shares of Common Stock”*** under this subsection (b) only if they have been unanimously approved by the Board of Directors;

(c) shares of Common Stock issued or deemed issued pursuant to the acquisition of another corporation or entity by the Company by consolidation, merger, purchase of all or substantially all of the assets, or other reorganization in which the Company acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent (50%) or more of the equity ownership of such other entity;

(d) shares of Common Stock issued or deemed issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding on the Filing Date;

(e) shares of Common Stock issued or deemed issued by the Company that are (i) approved by the Board and (ii) approved by the vote of the holders of at least a majority of the voting power of the Series A Preferred Stock then outstanding, specifically and expressly as being excluded from the definition of "Additional Shares of Common Stock" under this Section 5.8(b)(i) (which approval shall not be deemed to have been given solely by virtue of such holders of Series A Preferred Stock having otherwise approved the authorization or issuance of any such shares);

(f) Common Stock issued or deemed issued pursuant to Section 5.8(c) as a result of a decrease in the Conversion Price resulting from the operation of this Section 5.8;

(g) Common Stock issued in the Company's initial public offering in which all outstanding shares of the Company's Preferred Stock convert to Common Stock; and

(h) up to an additional 819,672 shares of Common Stock issued or deemed issued by the Company that are not otherwise excluded from the definition of "Additional Shares of Common Stock" under this Section 5.8(b)(i).

(ii) The "***Aggregate Consideration Received***" by the Company for any issue or sale (or deemed issue or sale) of securities shall (A) to the extent it consists of cash, be computed as the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company; (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board; and (C) if Additional Shares of Common Stock, Convertible Securities or Rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by

the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.

(iii) “*Common Stock Equivalents Outstanding*” shall mean the number of shares of Common Stock that is equal to the sum of (A) all shares of Common Stock of the Company that are outstanding at the time in question, plus (B) all shares of Common Stock of the Company issuable upon conversion of all shares of Series A Preferred Stock or other Convertible Securities that are outstanding at the time in question, plus (C) all shares of Common Stock of the Company that are issuable upon the exercise of Rights or Options that are outstanding at the time in question assuming the full conversion or exchange into Common Stock of all such Rights or Options that are Rights or Options to purchase or acquire Convertible Securities.

(iv) “*Convertible Securities*” shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.

(v) The “*Effective Price*” of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Company under this Section 5.8, into the Aggregate Consideration Received, or deemed to have been received, by the Company under this Section 5.8, for the issue of such Additional Shares of Common Stock.

(vi) “*Rights or Options*” shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(c) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price required under this Section 5.8, if the Company issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect, then the Company shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise, conversion or exchange of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Company upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(i) if the minimum amount of consideration payable to the Company upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events, then the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; and

(ii) if the minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that were actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred Stock.

5.9 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price, the Company, at its expense, shall cause its Chief Financial Officer or other duly authorized officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail or otherwise deliver such certificate, by first class mail, postage prepaid, or by nationally recognized express courier service, delivery fees prepaid, to each registered holder of Series A Preferred Stock at the holder's address as shown in the Company's books.

5.10 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Series A Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion. All shares of Series A Preferred Stock to be converted

by a holder of such Series A Preferred Stock on any date shall be aggregated for purposes of determining whether any fractional shares are to be issued.

5.11 Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5.12 Waiver of Adjustment to Conversion Price. Notwithstanding anything herein to the contrary, any specific downward adjustment of the Conversion Price of the Series A Preferred Stock may be waived in a specific instance by the consent or vote of the holders of a majority of the outstanding shares of the Series A Preferred Stock. Any such waiver shall bind all future holders of shares of the Series A Preferred Stock.

6. Preferred Stock Protective Provisions. For so long as at least one million (1,000,000) shares of Series A Preferred Stock are outstanding (as adjusted to the extent necessary to reflect any Preferred Stock Event), the Company shall not (by amendment of the Articles of Incorporation, merger, consolidation, reorganization or otherwise), without the approval, by vote or written consent, of the holders of at least a majority of the Series A Preferred Stock then outstanding, voting as a single class:

- (1) alter, change, repeal or waive any of the rights, preferences or privileges of the Series A Preferred Stock in the Articles of Incorporation;
- (2) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Common Stock or Series A Preferred Stock.
- (3) authorize (whether by reclassification or otherwise) shares of any class or series of stock having rights, preferences or privileges senior to or on a parity with the Series A Preferred Stock;
- (4) redeem or repurchase (other than Permitted Repurchases) any shares of Common Stock;
- (5) consummate any Sale of the Company;
- (6) amend or waive any provision of the Company's Amended and Restated Articles of Incorporation or Bylaws;
- (7) change the number of directors to a number other than five (5); or

(8) declare or pay any dividends on, or declare or make any other distribution (other than Permitted Repurchases) directly or indirectly, on account of any shares of Common Stock or Preferred Stock.

7. Miscellaneous.

7.1 No Reissuance of Series A Preferred Stock. No share or shares of Series A Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Company shall be authorized to issue.

7.2 Repurchases of Common Stock. Subject to any approvals otherwise required herein, any repurchases or redemptions by the Company of any shares of its capital stock may be made without regard to any "preferential dividends arrear amount" or any "preferential rights amount" (as such terms are defined in Section 500(b) of the Corporations Code of the State of California).

ARTICLE VII

The Board of Directors of the corporation shall have the power to adopt, amend or repeal Bylaws of the corporation except as provided in Section 212 of the California Corporations Code.